

//1//

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO. 4405/2001

SURENDRA KUMAR JAIN

Vs.

RAJASTHAN CO-OPERATIVE DIARY FEDERATION LTD, JAIPUR

Date: 19.09.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. Sanjeev Prakash Sharma for the petitioner.

Mr. G.K. Garg for the respondent.

REPORTABLE

Brief facts of the case are that the petitioner was initially appointed in the District Gazetteers Department of the State Government as UDC Stenographer Clerk on 01.11.60 and thereafter posted as Stenographer Grade-III w.e.f. 01.04.61. The petitioner was thereafter promoted from time to time and when he was working as Stenographer Grade-I, his services were placed on deputation with the Rajasthan Cooperative Diary Federation (for short 'RCDF') and he joined on 01.06.81. The petitioner seeks voluntary retirement after completion of 25 years of service under Rule 244 (1) of the R.S.R. while working on deputation in RCDF and the same was accepted vide order dated 29.01.86.

The controversy in this writ petition is that the petitioner was given the benefit of leave encashment but as per the petitioner, the respondent has not paid the leave encashment for remaining 98 days, as claimed by the petitioner. Learned counsel for the petitioner further submits that since the petitioner has spent 15 years in service with RCDF, therefore, he is entitled to get the benefit of leave encashment of 223 days.

In support of his submissions, the learned counsel for the petitioner referred Rule 91-B of R.S.R., which is reproduced hereunder:-

91-B R.S.R.: Cash payment in lieu of unutilized privilege leave on the date of retirement:

(1) A Government servant on retirement from service on superannuation, invalid, compensation or retirement pension under rule 144(1), shall be paid cash equivalent to leave salary in respect of the period of unutilized privilege leave not exceeding (240 days) at his credit at the time of retirement.

(2) The cash payment of leave salary admissible under sub-rule (1) above shall be paid on retirement in one lump sum as one time settlement.

(3) The cash payment under this rule shall be equal to leave salary as admissible for privilege leave and dearness allowance admissible on that leave salary at the rates in force on

//3//

the date of retirement. No City Compensatory Allowance or House Rent Allowance shall be payable on cash payment of leave salary.

(4) The cash payment for unutilized privilege leave shall be calculated as follows:-

Cash Payment=	Pay admissible on the date of retirement plus dearness allowance admissible on that date	Number of unutilized privilege leave at credit on the date of retirement subject to a maximum of (240 days)
	30	X

(5) The head of office or head of Department, as the case may be shall be competent to grant leave and permit cash equivalent of privilege leave not exceeding (240 days) at the credit of a Government servant on the date of retirement.

(6) The benefit of cash payment under this rule shall also be admissible to Government servants who are granted extension in service after attaining the age of superannuation. In such cases the benefit shall be granted on the date of final retirement on the expiry of extension."

Learned counsel for the petitioner also referred Rule 145-Decision No.3 of R.S.R., which is as under:-

145(Decision No.3) RSR:
With a view to simplify the existing system and procedure for calculation of the leave salary and pension

contribution, the matter has been examined and the Governor has been pleased to order that recovery of leave salary contribution in respect of Government Servants sent on deputation to public undertakings, Universities, autonomous bodies, corporations, Municipalities, Government Companies and other bodies etc. wholly and substantially owned or controlled by Government shall henceforth be not made. Consequently the payment of leave salary including leave encashment benefits in respect of leave taken by a Government servant while on deputation/foreign employer ***in discharge of their liability to pay the costs of leave salary to the Government.*** The reversion of a Government servant on deputation takes effect from the date on which he takes charge of the post under Govt. Thus in case of a Government servant, who takes leave on the conclusion of his foreign service before rejoining his post under Government, the liability for payment of leave salary in such cases shall be borne by the borrowing authority. If a Government servant attains the age of superannuation, while on deputation and is consequently relieved of his duties on retirement the cash payment in respect of unutilized principle leave at the credit of the Government servant on the date of retirement shall also be made by the borrowing authority or the foreign employer."

After referring the aforesaid rules, the petitioner give much emphasis on Regulation 12, which deals with Privilege Leave and the same is reproduced

hereunder:-

Regulation 12: Privilege Leave:

(i) Privilege leave shall be admissible to temporary employee at the rate of one twenty second of the period spent on duty. However, on completion of 240 days of continuous service or confirmation whichever is earlier the privilege leave admissible to such employee shall be at the rate one eleventh of the period spent on duty. 'Duty' for this purpose shall mean the period spent in the service of the Federation excluding the periods of leave of any kind except casual leave. The maximum period of Privilege leave which can be accumulated privilege leave that may be granted at a time to an employee shall be 120 days."

After referring the aforesaid provisions of RSR, the learned counsel for the petitioner submits that the RSR and leave encashment therein were not applicable to the regulations of 1980 at that time and it came into force for the first time after Notification dated 27.04.1987. As per regulation 10(x) of the Regulations of 1980, the respondents were obliged to grant the petitioner all leave benefits which were admissible to him in the State Government Rules since he was working there on deputation.

Learned counsel for the petitioner also referred the order of voluntary retirement Annexure-2, dated 29.01.86. After referring Annexure-2, he submits that the petitioner is entitled for leave encashment,

the services spent in RCDF and as per the petitioner, still the petitioner is entitled to get the benefit of leave encashment for the remaining 98 days.

Per contra, learned counsel for the respondent referred Office Order dated 05.02.86 (Annexure-3) and also placed the original record for perusal of the Court as per the directions issued by this Court. He submits that Rule 145, Decision No.3 of the RSR is applicable to public undertakings, Universities, autonomous bodies, corporations, Municipalities, Government Companies and other bodies etc. and which provides for payment of leave salary including leave encashment benefits in respect of leave taken by a Government servant while on deputation/foreign service shall be made by the borrowing authority/foreign employer in discharge of their liability to pay the cost of leave salary.

The conditions relating to transfer on permanent absorption are contained in Appendix IX of the Rajasthan Civil Service Pension Rules, 1996, wherein- Pensionary Benefits:- in such cases the Govt. servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules

applicable to him in his parent organization."

Similarly with regard to Leave- A Government servant taking up an appointment in State Pubic Enterprise will be entitled to encashment of privilege leave to his credit at the time of acceptance of his resignation from Govt. service subject to a limit of 240 days. Half pay leave will stand forfeited. "

Now it is enhanced to 300 days vide Notification dated 02.04.98 issued by the State Government, by which the State Government has increased the maximum Privilege Leave from 240 days to 300 days and as per Regulation 12 of the RCDF Employees (Non-workman) Service Regulations, 1981, the maximum period of privilege leave which can be accumulated privilege leave that may be granted at a time to an employee shall be 120 days, which was also increased vide aforesaid Notification to 300 days.

As per amended Regulation 12(i), "the admissibility of privilege leave shall be calculated as per the RSR amended from time to time.....".

It is further contended that so far as leave encashment of P.L. for 300 days, payment has already been made to the petitioner, which has not been disputed.

Now the question arise whether the petitioner

is entitled to receive the leave encashment for the remaining 98 days, as alleged by the petitioner, or not?

I have carefully examined the relevant record placed before me for perusal by the learned counsel for the respondent. The relevant Note-sheets are reproduced hereunder:-

“(2) Further, even if for a moment, it is agreed that the Rule 145 Decision No.3 below it, is applicable to our RCDF, it does not entitle him to the payment of Encashment of leaves of 175 days as taken because of the reasons:-

(i)It is applicable , as per the spirit of the Rule 145 Decision No.(3), only when the employee seeking benefit under this Rule retires from such foreign employer on superannuation from Govt. services. In other words, the Rule is applicable, under the circumstances, like where a GOR employee is sent on deputation to a foreign employer {to any of the ones as enumerated in decision No.(3)}, and while on deputation, the employee attains superannuation and having reached such superannuation retires from such foreign employer. Thus, the condition precedent to getting benefit under such Decision No. (3) Rules 145 RSR is that retirement must be **by event of superannuation** and superannuation only. It therefore follows that the above Decisions, Rule 145 does not apply to any retirement of the employee from Govt. services while on deputation with such foreign body/Organisation.

It is widely known that the facts of Sh. Jain's retirement from GOR and his absorption in RCDF are altogether different

from what envisaged in the above Decision No.3. In October, 85 when Sh. Jain retired from his Govt. service and sought absorption in RCDF, he never retired from GOR while serving on deputation with RCDF on attainment of superannuation. His was, on the contrary, an event of Voluntary Retirement. This being so, payment of 175 unutilised P.L., as above had/has nothing to do with the benefit conferred under the Decision No.3, below Rule 145, RSR.

C(2)(ii) Also, the above Rule 145 Decision No.3 gives benefit to such deputationist in a case where the deputationist superannuates from such foreign employer holding the same post as he (the deputationist) would have held had he had continued in his parent department in Govt. Sh. S.K. Jain's case does not satisfy this too. The post he held in the Govt. at the time of voluntary retirement was substantive Stenographer, while the post he joined in RCDF after absorption was higher and again the post he superannuated from happens to be Pvt. Secy. in RCDF.

C(3). Also, when it comes to invoking rules for claiming some benefit whether they be rules of GOR or of RCDF; an employee cannot resort to practice of "Pick and Choose". In case of Sh. SK Jain however, this is what he wants to do. When it comes to having benefits, one of the GOR Rules, viz Rule 145 Decision No.3, Sh. Jain contends is applicable in his case; whereas when it comes to losing/foregoing, viz. Govt. pension's adjustment in Salary from RCDF on the basis of applicability of the Rule 337 as also the Rule 158 Decision No.4 below it of RSR, such Rules have been found to have been violated or kept apart in Sh. Jain's case. The Rule 337 and Rule 158 RSR relating to grant of voluntary retirement and proportionate pension, Sh. Jain contends/contended, are/were not applicable on his absorption in RCDF after voluntary retirement from GOR. Hence, either all the concerned Govt. Rules should have been

followed or no Govt. Rules should have been made applicable in retirement from Govt. pertaining to encashment of Unutilised 175 PL of Govt. service period/getting in full.

D. Apart from this, as for terms and conditions of deputation of Sh. Jain in RCDF during the period 1981 to 1985 are concerned, they also nowhere justify that RCDF was under a financial obligation to grant/pay encashment of unutilised P.L. of 175 days, as done in Feb.86, pertaining to Govt. Service Period. If RCDF has already discharged any such financial obligation, it should certainly be considered as to have been made against maximum number of 300 P.L. encashment.

E. Thus, from the above, it is seen that in no case, neither the Rule 145, Decision No.3 below it nor Deputation Terms/conditions justify the encashment of P.L. made by RCDF for unutilised 175 P.L. as worth ignoring from the maximum No. of 300 days P.L. encashment allowable in RCDF Rules.

Hence, since the RCDF had already made encashment of unutilised P.L. of 175 days already, it is therefore not bound to make further encashment of P.L. beyond 125 days i.e. $300-175=125$ days.

F. Besides, the terms of absorption of Sh. Jain (on the post of Sr. P.A.) done in Oct. 85 as contained in Administrator's Resolution No. 49 & 72 are also vetted.

Interpretation of above resolutions does not indicate that Sh. Jain shall be entitled to the encashment of unutilised PL over and above the maximum number of P.L. available to any Federation employee under RCDF Rules for encashment, namely 300 days; meaning thereby that if the RCDF already made some encashment of P.L. to Sh. S.K. Jain at any point of time it should be included in the number of 300 days being

the maximum number allowable in RCDF Rules.

G. Lastly, from point of view of natural justice too, one can't plead that claim of benefit through discrimination is a right. Rules are meant to ensure equity amongst the employees of the same post/cadre. Rules protect an employee from being put to any financial loss or hardship. All the employees serving RCDF, inducted in RCDF through any recruitment channel i.e. fresh appointment/absorption/reappointment etc. are entitled, as far benefit of encashment of P.L. is concerned, to the same benefit of encashment of maximum number of P.L. as the RCDF Rules provide, viz. 300 days. Justice does not allow any employee from being signaled out for being given discriminatory treatment so as to allow more or higher or additional financial benefit; say allowing higher number of P.L. encashment than 300 days.

Conclusion:

Therefore, in our view which is based on the above facts/grounds, no further encashment of Privilege Leave of 98 days can be allowed/given to Sh. SK Jain over and above such benefit of P.L. encashment as already allowed to him for 300 days; i.e. 175 days in Feb. 86 and 125 days in July, 99."

I have also perused the Regulations referred by the respective parties.

Rule 91-B of the RSR deals with Cash payment in lieu of unutilised privilege leave on the date of retirement and undoubtedly the maximum limit is fixed 300 days, unutilised privilege leave not exceeding 300 days at his/her credit at the time of retirement. The

leave encashment is undoubtedly admissible up to the limit of 300 days.

Upon perusal of Decision No.3 of Rule 145 of the RSR, it is clearly indicated in the rule that if a Government servant attains the age of superannuation, while on deputation and is consequently relieved of his duties on retirement the cash payment in respect of unutilized privilege leave at the credit of the Government servant on the date of retirement shall also be made by the borrowing authority or the foreign employer.

It is not disputed that for the balance unutilized leave lies with the RCDF. It is also not disputed that RCDF has made the payment to the petitioner but the dispute is with regard to leave encashment for remaining 98 days, as claimed by the petitioner.

As per the decision taken by the RCDF reproduced herein above and Rule 145 of the RSR, since the payment of leave encashment for 175 days has already been received by the petitioner from the Government and for the remaining 125 days, undisputedly the RCDF has made the payment to the petitioner.

As per the Office Order Annexure-3, it is clearly stipulated in the aforesaid order dated

05.02.86 that on being retired from Government service under Rule 144(1) of R.S.R. vide Order dated 29th January, 1986 of the Director of District Gazetteers, Rajasthan, Jaipur sanction is hereby accorded to Shri S.K. Jain, Sr. P.A. To the Managing Director, R.C.D.F. For the grant of encashment of 175 days P.L. lying at his credit under rule 91-B of R.S.R. and this amount shall be payable to Shri Jain from the Rajasthan Cooperative Dairy Federation Ltd., Jaipur as per decision No.3 below rule 145 of R.S.R., meaning thereby that RCDF in respect of the payment of the leave encashment in credit under Rule 91-B of the RSR was sanctioned by the Director of District Gazetteers, Rajasthan, Jaipur and as per the rules, maximum leave encashment prescribed is 300 days and the remaining leave encashment for 125 days also has been paid by the respondent- R.C.D.F.

Having considered all these facts and the relevant provisions of law as well as the decision taken by the RCDF, I find no fault in the decision taken by the RCDF. The petitioner is only entitled to get the benefit of leave encashment for maximum period of 300 days, which has been paid to the petitioner and beyond this limit, the petitioner is not legally entitle to get the payment of leave encashment.

//14//

In view of these facts, I find no merit in the writ petition.

Consequently, the writ petition fails and the same is hereby dismissed.

The application for passing further orders also stands rejected.

(K.S. RATHORE), J.

/KKC/